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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. BRIAN EARL TURNER, Defendant and Appellant.	A121700 (Solano County Super. Ct. No. VCR 190346)

Defendant was convicted following a jury trial of assault with a semiautomatic firearm, and an associated enhancement for personal use of a firearm (Pen. Code, §§ 245, subd. (b), 12022.5, subds. (a) and (d)).[1] In this appeal defendant claims that the prosecutor violated his state and federal rights to due process, equal protection, and trial by jury as articulated in *Batson v. Kentucky* (1986) 476 U.S. 79 (*Batson*), and *People v. Wheeler* (1978) 22 Cal.3d 258 (*Wheeler*), by improperly using peremptory challenges to excuse three prospective jurors on the basis of race. We conclude that the record supports the trial court's finding that the jurors were not excused for a discriminatory purpose, and affirm the judgment.

[1] Defendant was acquitted of two counts of attempted murder, a second count of assault with a semiautomatic firearm, a count of assault with a firearm, and enhancements associated with those offenses. (Pen. Code, §§ 664/187, subd. (a), 245, subd. (b), 245, subd. (a)(2), 12022.5, subds. (a) & (d)).

STATEMENT OF FACTS[2]

Defendant and the victim, Rudolph Barbarin, were participants in a dice game that occurred on the evening of March 13, 2007, at the residence of Eloise Weary on Springs Road in Vallejo. Acrimony between the two of them developed during the game "over money," followed by a "physical fight" during which Barbarin punched defendant in the face and spat on him.

Barbarin testified that after the fight he walked to his father's house. Defendant followed along behind him and exclaimed, "What's up?" Barbarin thought defendant wanted to continue their fight. Defendant then pulled a gun from his coat pocket, pointed it at Barbarin and said, "I should kill you." Barbarin kept walking away from defendant, "dodging" and "looking back" at him.

When Barbarin reached his father's house, he went upstairs and asked his father, Ronald Barbarin, for a gun.[3] Ronald said, "No, I don't have a gun," so Barbarin quickly left to seek "some help" elsewhere.

Ronald confirmed that his son appeared at his house the night of March 13, 2007, acting "edgy," and asked for a gun. Barbarin told his father that he "got into it with some guy over a dice game" and they "had a fight, and the guy came after him with a gun." Ronald declined to give Barbarin a gun, and told him, "You need to call the police."[4] Barbarin left the house and "walked down the street" toward Interstate 80.

When Barbarin arrived at an overpass he noticed that defendant was following him again. Defendant yelled, "Hey, come here, come here." Barbarin thought defendant "was going to try to shoot" him. He began "running down Miller Street," away from defendant. As he ran, Barbarin heard three or four gunshots, none of which struck him.

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[2] The prosecution presented evidence of three separate shooting incidents. We will confine our recitation of the facts to the single incident that resulted in a conviction.

[3] To avoid confusion we will refer to the victim's father by his first name Ronald, and his mother Juanesta Barbarin by her first name Juanesta; we will continue to refer to the victim by his last name.

[4] In contrast to Barbarin's testimony, Ronald testified that he did have guns in the house, but told his son, "Oh no, you're not getting nothing like that."

Barbarin ran into a backyard on Miller Street, where he hid and called his mother. Barbarin told Juanesta that someone tried to kill him, and asked her to come and get him. Juanesta testified that she drove to Springs Road where she observed Barbarin "walking fast." Barbarin "jumped in" Juanesta's car and exclaimed, "Man, that guy was shooting at me." Barbarin's shirt was torn and he was upset. Juanesta drove Barbarin to her home. On the way Barbarin told her that he had been "shooting dice" and "got into a fight with someone," after which the person "shot at him." Defendant identified the shooter to Juanesta as "someone named 'B'."

Eloise Weary testified that she observed a fight in the backyard of her residence on the evening of March 13, 2007. Weary asked the combatants to leave, and they did so. Weary identified one of the young men who participated in the fight as defendant. Defendant was a friend of Weary's son, so she was acquainted with him. Weary also testified that some time before the fight occurred defendant "jumped" her in her backyard and "hit" her.

In his testimony at trial Barbarin initially identified the man he fought with and who shot at him only as someone known to him as "B," and indicated that he did not recognize defendant. He subsequently testified with certainty that defendant was the one who "shot" him (although it seems from the remaining record Barbarin was never struck by any of the gunfire). Barbarin explained that he declined to identify defendant at first due to several telephone calls he received before trial during which he "was threatened" by callers who warned him not to testify.

Evidence of a statement made by defendant to the police was also presented at trial. Defendant admitted a physical "tussle" with Barbarin that started "over the dice game."[5] During the fight Barbarin tried to spit in defendant's face. Weary came out of the house and "broke the fight up." Defendant and Barbarin were mad at each other, but after Weary told them to "let this go," they "shook hands," left, and went "separate

[5] Defendant stated that no punches were thrown during the altercation.

ways." Defendant denied that he told Barbarin, "I'll shoot you," or followed him after the fight. According to defendant's statement, when he left Weary's house he took a cab to visit his girlfriend in South Vallejo, and they went to eat at a Denny's restaurant. Defendant claimed that he did not see Barbarin after the fight, and never shot at him.

DISCUSSION

Defendant argues that the trial court erred by denying his *Batson/Wheeler* motion. He maintains that the prosecutor violated his constitutional rights to equal protection and a jury drawn from a representative cross-section of the community by impermissibly exercising peremptory challenges on the basis of purposeful racial discrimination. The focus of his claim is upon "three non-White prospective jurors" who were excused by the prosecutor: K.J. (Juror No. 7), V.J. (Juror No. 12) and E.G. (Juror No. 7).[6] Defendant complains that the prosecutor failed to provide adequate "race-neutral" reasons for excusing the three jurors.

The *Batson/Wheele*r motion was made by the defense after the prosecutor had exercised a total of five peremptory challenges and passed the jury panel. Defense counsel asserted that the prosecutor had engaged in a "pattern" of excusing two male African-American jurors, V.J. and E.G., and a female, K.J., who was either African-American or Hispanic.[7] Defense counsel claimed that voir dire did not expose bias on the part of the three excused jurors in question, and the pattern of challenges indicated "a reasonable inference or strong likelihood that these folks being of African-American descent were being challenged because of their group association rather than any specific bias." The defense asked the court to reseat the excused jurors.

After commenting briefly on the three excused jurors, the trial court found that the defense "made a prima facie case of a possibility of discriminatory exclusion" based on

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[6] We will refer to the jurors by their initials only, which seems to be the manner preferred by the California Supreme Court. (See *People v. Lewis* (2008) 43 Cal.4th 415, 483–484; *People v. Roldan* (2005) 35 Cal.4th 646, 703; *People v. Griffin* (2004) 33 Cal.4th 536, 553–556.)

[7] The court agreed that K.J. was "a person of color." Both defendant and the victim in this case are African-Americans.

race, and requested justification from the prosecution. The prosecutor proceeded to explain the reasons for challenging the jurors. The court found no "violation" of the *Batson/Wheeler* standards, and denied the motion. As the jury was ultimately empanelled, African-Americans constituted three of the jurors and one of the two alternates.

I. The Batson/Wheeler Standards.

" 'A prosecutor's use of peremptory challenges to strike prospective jurors on the basis of group bias — that is, bias against "members of an identifiable group distinguished on racial, religious, ethnic, or similar grounds" — violates the right of a criminal defendant to trial by a jury drawn from a representative cross-section of the community under article I, section 16 of the California Constitution. [Citations.] Such a practice also violates the defendant's right to equal protection under the Fourteenth Amendment to the United States Constitution. [Citations.]' [Citation.]" (*People v. Hutchins* (2007) 147 Cal.App.4th 992, 996.)

"In a recent decision, the United States Supreme Court reaffirmed that *Batson* states the procedure and standard to be employed by trial courts when challenges such as defendant's are made. 'First, the defendant must make out a prima facie case "by showing that the totality of the relevant facts gives rise to an inference of discriminatory purpose." [Citations.] Second, once the defendant has made out a prima facie case, the "burden shifts to the State to explain adequately the racial exclusion" by offering permissible race-neutral justifications for the strikes. [Citations.] Third, "[i]f a race-neutral explanation is tendered, the trial court must then decide . . . whether the opponent of the strike has proved purposeful racial discrimination." [Citation.]' [Citation.]" (*People v. Cornwell* (2005) 37 Cal.4th 50, 66–67; see also *People v. Davis* (2008) 164 Cal.App.4th 305, 309–310.)

We need not examine the first stage of the *Batson/Wheeler* inquiry, as the trial court found that defendant "made a prima facie case of a possibility of discriminatory

exclusion."[8] We proceed to the second stage of the procedure: the prosecutor's statement of reasons for the challenges.

II . The Prosecutor's Statement of Reasons.

The prosecutor discussed his reasons for excusing the three jurors, but before he did so the trial court commented briefly upon the jurors in the course of finding that a prima facie showing of discrimination had been made. The court mentioned that Juror E.G. has a daughter who is an Oakland Police Officer and a son "who is a lawyer." The court characterized E.G. as a "charming guy," whose "comments were kind of peculiar." Of Juror V.J. the court stated: he "was weak and indecisive;" his answers "were all over the place;" and, "if I were the D.A., I would have absolutely no confidence that he would follow the law, be a fair juror" when presented with the "facts of the case." Defendant complains the court's observations were "impermissible," and "prejudicially tainted" the prosecutor's subsequent statement of reasons.

While the trial court was not required to offer commentary on the excused jurors before ruling on the first phase of defendant's motion or demanding a response from the prosecutor,[9] we find that the cursory remarks by the court did not constitute error. The three-step *Batson/Wheeler* analysis is "not so mechanistic that the trial court must proceed through each discrete step in ritual fashion." (*People v. Adanandus* (2007) 157 Cal.App.4th 496, 500–501, citing *People v. Bonilla* (2007) 41 Cal.4th 313, 343, fn. 13.) As we read the record, the court merely expressed a brief portrayal of the jurors as part of the discussion and argument that preceded the finding of a prima facie case of

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[8] "In order to make a prima facie showing, 'a litigant must raise the issue in a timely fashion, make as complete a record as feasible, [and] establish that the persons excluded are members of a cognizable class.' [Citation.] The high court recently explained that 'a defendant satisfies the requirements of *Batson's* first step by producing evidence sufficient to permit the trial judge to draw an inference that discrimination has occurred.' [Citation.]" (*People v. Gray* (2005) 37 Cal.4th 168, 186.) The Attorney General has not challenged the trial court's finding that the totality of the facts presented by the defense gave rise to an inference of discriminatory purpose.

[9] " '[T]he trial court is not required to make specific or detailed comments for the record to justify every instance in which a prosecutor's race-neutral reason for exercising a peremptory challenge is being accepted by the court as genuine.' [Citation.] Inquiry by the trial court is not even required." (*People v. Guerra* (2006) 37 Cal.4th 1067, 1100–1101.)

discrimination. The court did not presume to state the prosecutor's reasons or make a ruling on the justification for the challenges. Nor do we find any indication that the court failed to undertake the requisite sincere, neutral, and reasoned evaluation of the circumstances before it. (*People v. Reynoso* (2003) 31 Cal.4th 903, 919; *People v. Hutchins, supra,* 147 Cal.App.4th 992, 997.) And finally, we are not persuaded that the court's remarks influenced the prosecutor's statement of reasons or otherwise interfered with the truth-seeking objective of the proceedings.

After the trial court's remarks the prosecutor properly offered a statement of reasons for challenging the three jurors. "A prosecutor asked to explain his conduct must provide a ' "clear and reasonably specific" explanation of his "legitimate reasons" for exercising the challenges.' [Citation.] 'The justification need not support a challenge for cause, and even a "trivial" reason, if genuine and neutral, will suffice.' [Citation.]" (*People v. Lenix* (2008) 44 Cal.4th 602, 613, italics omitted.) Even a "reason that makes no sense is nonetheless 'sincere and legitimate' as long as it does not deny equal protection." (*People v. Guerra, supra,* 37 Cal.4th 1067, 1101.)

Here, the prosecutor first pointed out two factors associated with the case as a whole that were pertinent to the issue of discriminatory exclusion of jurors: both the victim and defendant were African-American, which tended to negate any "advantage in the case" from "excluding Black jurors;" and, the African-American jurors were excused "in a row" only because they were "in order," not due to any pattern of discrimination. The prosecutor then addressed the three prospective jurors individually in his statement of reasons.[10]

A. Prospective Juror K.J.

K.J. stated that she is employed as a restorative nursing assistant, and is married to a hydraulic mechanic. She has been a resident in the "area for 35 years," and had no prior jury experience. K.J. claimed she would not be "disappointed" if no "futuristic type

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[10] We will recite the background information on the three jurors elicited during voir dire, followed by the reasons for striking the jurors given by the prosecutor.

scientific evidence" was presented in the case. She was comfortable "judging" the credibility of witnesses. K.J. professed that she would not "automatically discount" the testimony of someone with a "criminal history."

The prosecutor stated of K.J. that she "didn't seem to me to be grasping a lot of the questions" asked of her. He expressed the importance of finding jurors who were "paying attention" and able to follow "what's going on" in the case. The prosecutor felt that K.J. "didn't seem to be paying attention, and other times, just didn't really understand."

B. Prospective Juror E.G.

E.G. stated that his occupation is "tile layer." He is unmarried, although he has a son who is a business lawyer and a daughter who is an Oakland Police Officer. When asked if his daughter's affiliation with law enforcement would exert "pressure" on him in the case, E.G. responded, "It might not." He added: "Well, I would say it wouldn't." E.G. asserted that he would not feel "any embarrassment" related to his daughter if the jury returned "a verdict of not guilty."

The prosecutor offered that when questioned, E.G. "did not seem to follow much of anything," and was not "capable of grasping certain points." The prosecutor reiterated that parts of the case were "complex," and he wanted jurors "who are going to understand what's going on." Defense counsel argued that E.G.'s answers did not reveal any lack of intelligence, and "calling somebody stupid and saying that they shouldn't be on the jury doesn't cut it" under the *Baston/Wheeler* standard. The court commented that Juror E.G. gave responses that were "kind of odd" or "different."

C. Prospective Juror V.J.

V.J. is an "engineering administrator" with experience on a jury in "the late '80's" in Contra Costa County. The prior jury experience would not bias him in the present case. V.J. acknowledged that he was "brought up in Richmond," and had "some negative things" happen in his neighborhood associated with law enforcement. When asked if he would be able to make a decision "on the facts of this case" despite his experiences with law enforcement, V.J. replied: "I would do my best." In response to a query about any

family members who had been victims of crimes similar to those with which defendant was charged, V.J. stated that he had "two brothers who were shot" and a nephew who "was killed" in Richmond. No suspects were arrested in connection with those incidents. He was still "working through these issues," and "that would be a problem here." V.J. claimed that despite "those unfortunate circumstances," "I would try to be as fair as I can." V.J. also expressed that he was "nervous about the charges," particularly the seriousness of the case. He nevertheless maintained that he would do his "best to work through" his experiences and feelings, and wanted "the truth to come out at the end."

In his statement of reasons for excusing V.J. the prosecutor articulated concern with "too many variables" with the prospective juror in light of his experiences with "relatives who had been shot" and the discomfort he expressed. The prosecutor also mentioned that V.J. was the juror who "had one relative that I think was in jail." Due to the "emotional situation" related to V.J., the prosecutor was "unsure" of "potential bias" on his part, and did not want to "take any chances" and "leave him on the jury.

Based on the explanation given by the prosecutor the trial court found that the challenges did not show "any purposeful racial discrimination or that they were race based."

III. The Finding of no Purposeful Racial Discrimination.

This leads us to the third step of the *Batson/Wheeler* analysis which is the crucial issue here, a review of the trial court's finding of no purposeful discrimination. (*People v. Adanandus, supra,* 157 Cal.App.4th 496, 505.) "At this stage, '[t]he proper focus . . . is on the subjective genuineness of the race-neutral reasons given for the peremptory challenge, not on the objective reasonableness of those reasons.' [Citation.]" (*Id.* at p. 506, italics omitted.) " '[T]he critical question in determining whether [a party] has proved purposeful discrimination at step three is the persuasiveness of the prosecutor's justification for his peremptory strike.' [Citation.]" (*People v. Hamilton* (2009) 45 Cal.4th 863, 900.) "At the third stage of the *Wheeler/Batson* inquiry, 'the issue comes down to whether the trial court finds the prosecutor's race-neutral explanations to be credible. Credibility can be measured by, among other factors, the prosecutor's

demeanor; by how reasonable, or how improbable, the explanations are; and by whether the proffered rationale has some basis in accepted trial strategy.' [Citation.] In assessing credibility, the court draws upon its contemporaneous observations of the voir dire. It may also rely on the court's own experiences as a lawyer and bench officer in the community, and even the common practices of the advocate and the office who employs him or her." (*People v. Lenix, supra,* 44 Cal.4th 602, 613, fn. omitted.)

"The existence or nonexistence of purposeful racial discrimination is a question of fact. [Citation.] We review the decision of the trial court under the substantial evidence standard, according deference to the trial court's ruling when the court has made a sincere and reasoned effort to evaluate each of the stated reasons for a challenge to a particular juror." (*People v. Hamilton, supra,* 45 Cal.4th 863, 900–901, fn. omitted.) " 'We review a trial court's determination regarding the sufficiency of a prosecutor's justifications for exercising peremptory challenges " 'with great restraint.' " [Citation.] We presume that a prosecutor uses peremptory challenges in a constitutional manner and give great deference to the trial court's ability to distinguish bona fide reasons from sham excuses. [Citation.] So long as the trial court makes a sincere and reasoned effort to evaluate the nondiscriminatory justifications offered, its conclusions are entitled to deference on appeal. [Citation.]' [Citation.]" (*People v. Lenix, supra,* 44 Cal.4th 602, 613–614.) " ' " 'If the record "suggests grounds upon which the prosecutor might reasonably have challenged" the jurors in question, we affirm.' " ' [Citation.]" (*People v. Adanandus, supra,* 157 Cal.App.4th 496, 501.)

Several factors related to the case and the composition of the jury militate against a finding of purposeful discrimination. The prosecutor passed three African-American jurors and one alternate. The jury was thus composed at least in some substantial measure of members of the group defendant claims were discriminatorily excluded. Of the five peremptory challenges by the prosecutor, only two were directed at African-American men, and one excluded a woman who may have been Hispanic or "half African-American." The acceptance by the prosecutor of a jury panel with a total of four African-American jurors on it, along with exclusion of other than African-American

prospective jurors, suggests that race was not a motive behind the challenges. (See *People v. Kelly* (2007) 42 Cal.4th 763, 780; *People v. Cornwell, supra,* 37 Cal.4th 50, 69–70;[11] *People v. Reynoso, supra,* 31 Cal.4th 903, 926.)

We turn to an examination of the reasons offered for the challenges. Defendant's primary complaint is that the prosecutor offered reasons for striking Jurors E.G. and K.J. that were "speculative" and "not supported by the record" by referring to them as imperceptive and inattentive. We cannot discount the prosecutor's assessment of the capability of the jurors to pay attention to the case and grasp the entirety of the evidence. "A prospective juror may be excused based upon facial expressions, gestures, hunches, and even for arbitrary or idiosyncratic reasons." (*People v. Lenix, supra,* 44 Cal.4th 602, 613.) " ' "[E]ven 'arbitrary' exclusion is permissible, so long as the reasons are not based on impermissible group bias." ' [Citation.]" (*People v. Hamilton, supra,* 45 Cal.4th 863, 901.) "As a general proposition, an honestly held belief that a prospective juror will be unable to understand the case is a legitimate basis for a peremptory challenge. And a prosecutor's peremptory challenges are presumed to be exercised in a constitutional manner." (*People v. Muhammad* (2003) 108 Cal.App.4th 313, 322.) "A tendency toward equivocation" by a prospective juror is also a quality that may be legitimately found objectionable by a prosecutor, as the party bearing the burden of proof. (*People v. Lancaster* (2007) 41 Cal.4th 50, 76.)

Here, the trial court found the prosecutor's evaluation of the jurors earnest and valid – in fact, the court expressed agreement with the prosecutor – and on appeal we must defer to the court's finding. While we can read the transcript before us, we cannot review the demeanor of the jurors during voir dire to determine their attentiveness, perception, and insight. "On appellate review, a voir dire answer sits on a page of

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[11] In *People v. Cornwell, supra,* 37 Cal.4th 50, 70, the court declared that the prosecutor's challenge of "one out of two African-American prospective jurors does not support an inference of bias, particularly in view of the circumstance that the other African-American juror had been passed repeatedly by the prosecutor from the beginning of voir dire and ultimately served on the jury." (In accord, *People v. Box* (2000) 23 Cal.4th 1153, 1188–1189.)

transcript. In the trial court, however, advocates and trial judges watch and listen as the answer is delivered. Myriad subtle nuances may shape it, including attitude, attention, interest, body language, facial expression and eye contact. 'Even an inflection in the voice can make a difference in the meaning. . . .' [Citation.] '[T]he manner of the juror while testifying is oftentimes more indicative of the real character of his opinion than his words. . . .' [Citation.]" (*People v. Lenix, supra*, 44 Cal.4th 602, 622.) " 'Step three of the *Batson* inquiry involves an evaluation of the prosecutor's credibility, [citation], and "the best evidence [of discriminatory intent] often will be the demeanor of the attorney who exercises the challenge." [Citation.] In addition, race-neutral reasons for peremptory challenges often invoke a juror's demeanor (*e.g.*, nervousness, inattention), making the trial court's first-hand observations of even greater importance. In this situation, the trial court must evaluate not only whether the prosecutor's demeanor belies a discriminatory intent, but also whether the juror's demeanor can credibly be said to have exhibited the basis for the strike attributed to the juror by the prosecutor. We have recognized that these determinations of credibility and demeanor lie " 'peculiarly within a trial judge's province,' " [citations], and we have stated that "in the absence of exceptional circumstances, we would defer to [the trial court]." [Citation.]' [Citation.]" (*Id*., at p. 614.) " 'All that matters is that the prosecutor's reason for exercising the peremptory challenge is sincere and legitimate, legitimate in the sense of being nondiscriminatory.' [Citation.]" (*People v. Guerra, supra*, 37 Cal.4th 1067, 1101.) Nothing in the record indicates to us that the prosecutor was less than genuine in his statement of reasons or that the trial court failed to undertake a sincere and reasoned effort to evaluate the nondiscriminatory justifications offered. Thus, the trial court's finding is entitled to deference and cannot be disturbed on appeal. (*People v. Watson* (2008) 43 Cal.4th 652, 670–671; *People v. Burgener* (2003) 29 Cal.4th 833, 864.)

As to Juror V.J., defendant argues that the prosecutor mistakenly thought he was the juror who had a relative in jail. Defendant is correct that the prosecutor's recollection was inaccurate, but we do not consider the mistake to be "important evidence of discriminatory intent," as defendant claims. Our high court has articulated several

reasons *not* to consider a prosecutor's mistaken perception or recollection of a juror as evidence of discriminatory purpose: "First, a 'mistake' is, at the very least, a 'reason,' that is, a coherent explanation for the peremptory challenge. It is self-evidently possible for counsel to err when exercising peremptory challenges. Second, a genuine 'mistake' is a race-neutral reason. Faulty memory, clerical errors, and similar conditions that might engender a 'mistake' of the type the prosecutor proffered to explain his peremptory challenge are not necessarily associated with impermissible reliance on presumed group bias. [Citation.] Third, a 'mistake' may be a reason based on 'specific bias' [citation] where, as appears to have been the case here, the prosecutor's error is one of erroneously believing, owing to clerical error, that a prospective juror had earlier been evaluated as specifically biased, when in fact she had not. Finally, a 'mistake' is a reason 'related to the particular case to be tried' [citation] to the extent the possibility that genuine errors of this sort will be made exists in every case." (*People v. Williams* (1997) 16 Cal.4th 153, 188–189, italics omitted.)

Moreover, additional legitimate reasons were given for the challenge of V.J. He expressed "some negative" experiences with law enforcement that occurred in his neighborhood in Richmond. Two of V.J.'s brothers were shot and his nephew was killed, without an arrest of a suspect in connection with any of those crimes. While V.J. stated that he would "try to be as fair" as he could, he acknowledged he was still "working through these issues," and "that would be a problem here." V.J. also conveyed nervousness about the charges and the seriousness of the case. The prosecutor cited the "emotional situation" created by V.J.'s experiences with crime and law enforcement and his "potential bias" as reasons to exclude him from the jury. Negative experiences with the criminal justice system of potential jurors or their family members or relatives provide reasons other than racial bias for a prosecutor to challenge them. (*People v. Avila* (2006) 38 Cal.4th 491, 554–555; *People v. Roldan, supra,* 35 Cal.4th 646, 702–703; *People v. Douglas* (1995) 36 Cal.App.4th 1681, 1690; *People v. Adanandus, supra,* 157 Cal.App.4th 496, 504.)

Finally, a comparative juror analysis, to the extent it is feasible on the present record, fails to demonstrate purposeful discrimination. We are cognizant of the rule that, " 'If a prosecutor's proffered reason for striking a black panelist applies just as well to an otherwise-similar nonblack who is permitted to serve, that is evidence *tending* to prove purposeful discrimination to be considered at *Batson's* third step.' [Citation.]" (*People v. Lenix, supra*, 44 Cal.4th 602, 621.) "Thus, evidence of comparative juror analysis must be considered in the trial court and even for the first time on appeal if relied upon by the defendant *and the record is adequate to permit the urged comparisons*." (*Id.* at p. 622, italics added.) As defendant acknowledges, the record of jury questionnaires fails to indicate the race of potential jurors, and so has little value in a comparative analysis. Without a record that is adequate for review, we cannot conduct a meaningful comparative analysis of excused and unexcused jurors. To the degree the record may be reviewed, although it shows that some jurors who were retained also had connections with law enforcement or the criminal justice system, it fails to prove purposeful discrimination in light of the remaining evidence. We conclude that the record provides substantial support for the trial court's conclusion that the prosecutor exercised peremptory challenges of potential jurors E.G., K.J. and V.J. in a constitutional manner.

Accordingly, the judgment is affirmed.[12]

Graham, J.[*]

We concur:
Marchiano, P. J.
Margulies, J.

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[12] Defendant also presented the issue in his opening brief of entitlement to 378 days of sentence credits. An augmentation of the record indicates that defendant "received his 378 days of credit," as he concedes. We therefore need not review the issue of credits on appeal.

[*] Retired judge of the Superior Court of Marin County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.